

THE EFFECTIVE DATE OF THIS ORDINANCE IS April 25, 2006
ORDINANCE NO. 06-09-405

OPINION, FINDINGS AND ORDINANCE
OF
THE BOARD OF COUNTY COMMISSIONERS
OF
FREDERICK COUNTY, MARYLAND

RE: APPLICATION OF GLADHILL PROPERTIES LIMITED PARTNERSHIP
REZONING CASE NO. R-05-04

OPINIONS/FINDINGS

Gladhill Properties Limited Partnership filed this application to rezone a 1.76 acre, more or less, portion of the Gladhill property from Agriculture (A) to General Commercial (GC). The property is located on the northeast side of Mount Zion road between MD Route 180 (Jefferson Pike) and US Route 340, in the Frederick Planning Region, all as more fully described in the record.

The rezoning request is for a map amendment to rezone a 1.76 acre portion of an existing 51.16 acre parcel from Agriculture to General Commercial. The 1.76 acre portion of land is at the western corner of the 51 acre parcel.

The basis for the requested piecemeal rezoning is that a mistake was made at the time of the 2002 Comprehensive Plan and Rezoning of the Frederick Region. The alleged mistake was made when the 2002 Comprehensive Plan and Rezoning were reviewed and adopted without considering the effects of the new entrance and driveway to the Gladhill property as it affected Lots 3A and 3B of Makeshift Estates.

In approving the site plan for the Gladhill Property, the Frederick County Planning Commission required that access to Lots 3A and 3B of Makeshift Estates was to be by means of an internal roadway which traverses -- in effect bisects -- the 1.76 acre area in issue. The access road runs across the Gladhill parcel and creates a disconnected small land area (1.76 acres) from the remaining area of the Gladhill property. The basis for the alleged mistake is that the action of the Frederick County Planning Commission in creating a disconnected small land area (1.76 acres) from the remaining area of the Gladhill Property, while at the same time requiring a new access point for Lot 3A, should have been considered during the 2002 Comprehensive Plan Update and Comprehensive Rezoning.

The Frederick County Planning Commission recommended approval of the proposed rezoning.

Based on all the evidence submitted in this case, the Board makes the following specific findings of fact (in addition to the findings above) on each of the matters mentioned in Maryland Code Annotated, Article 66B, Section 4.05(a):

1. POPULATION CHANGE: According to the 2002 Frederick Region Comprehensive Plan, the Frederick Planning Region contains 40% of the County's total population. Frederick City makes up approximately 66% of the Region's 81,393 residents (as of July, 2002).

The Gladhill Property is located near the unincorporated area of Feagaville. This small community is located southwest of Frederick City along MD Route 180. The community of Feagaville consists of 154 persons, several nearby sub-divisions, and a small commercial area.

The requested rezoning to General Commercial would not result in additional population.

2. AVAILABILITY OF PUBLIC FACILITIES:

A. SCHOOLS

The requested rezoning to General Commercial would not impact school enrollments.

B. FIRE AND RESCUE SERVICES

The site is in the Jefferson Fire Service Area and would be served by the Jefferson Volunteer Fire Company, located approximately 3.5 miles from the site.

C. POLICE SERVICE

The Frederick County Sheriff's Office and the Maryland State Police provide police protection.

D. LIBRARIES

The proposed rezoning would have no direct impact on library facilities.

F. WATER AND SEWER

Both the Gladhill Property and Makeshift Estates are classified NPS (No Planned Service) on the Frederick County Water and Sewerage Plan. The Gladhill Property and Lot 3A of Makeshift Estates are served with individual wells and septic systems.

3. PRESENT AND FUTURE TRANSPORTATION PATTERNS:

A. EXISTING SITE ACCESS CHARACTERISTICS

The Gladhill Property and Makeshift Estates currently have access from Mount Zion Road, a two-lane road with paved shoulders and an open section. The entrance to the Tractor Mart on the Gladhill Property is located directly across from the entrance to Stadler's Garden Center.

Among the conditions for approval imposed by the Frederick County Planning Commission in granting its approval for the site plan of Makeshift Estates, Lot 3A, 3B and 3C of the Makeshift Estates subdivision are to have access from Mount Zion Road by means of

one common entrance located between lots 3B and 3C. The Planning Commission also required an internal access easement to connect all lots and the southern adjoining property -- the Gladhill Property. This easement has been provided for Lots 3A, 3B and 3C.

The residential use on Lot 3A was previously served by a dedicated entry point from Mount Zion Road. Ownership of the property has recently been transferred, however, and the residential use has ceased. Under the conditions of approval by the Planning Commission, therefore, this entry has been converted to emergency access only.

B. EXISTING AND PROPOSED TRAFFIC VOLUMES OF MAJOR ROADS IN THE VICINITY

In 2002, the traffic volume on Mount Zion Road between MD Route 180 and US Route 340 was 2,890 vehicles per day. The Gladhill Tractor Mart was reviewed under the Adequate Public Facilities Ordinance (APFO) during site plan approval in 1998 and was found to be below APFO traffic thresholds.

APFO requirements restrict Lot 3A to uses that generate no more than a total of 20 peak trips per hour (Correction Plat recorded on January 25, 2005 in Plat Book 78, Page 35). Any uses that create more than 20 peak hour trips will require a Traffic Impact Study to be prepared in accordance with APFO regulations.

C. COMPREHENSIVE PLAN DESIGNATIONS OF MAJOR ROADS IN VICINITY

Mount Zion Road is classified as a minor arterial (80' right-of-way) in the Frederick Region Comprehensive Plan. Mount Zion Road connects US Route 340 (a denied access Freeway/Expressway) with MD Route 180 (Jefferson Pike) which is designated as a minor arterial road.

D. PLANNED IMPROVEMENTS

The commercial developers have constructed improvements to this portion of Mount Zion Road. Acceleration/deceleration lanes have been provided in accordance with site plan approvals for the commercial properties.

The Board finds that the proposed General Commercial zoning would generally have little impact on the existing transportation system. A final determination of adequacy will be made during an APFO review of a site plan submitted after any addition of the land segment in question to Lot 3A of Makeshift Estates.

4. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT FOR THE AREA:

A. EXISTING LAND USES IN THE NEIGHBORHOOD

The neighborhood includes residential, commercial and agricultural uses. The Gladhill Property is split between two land uses, with ten acres serving a tractor sales and service facility and the remaining forty acres in agricultural use. The tractor sales and service facility received a Special Exception from the Frederick County Board of Appeals in June, 1999. Conditions attached to the grant of the special exception included limiting the requested use to no more than 11 acres, as shown on the site plan submitted during the hearing. The site plan was granted approval by the Planning Commission in September, 1999.

Lots 3B and 3C of Makeshift Estates, located to the north of the subject site along Mount Zion Road, are being used for commercial purposes. Lot 3A is occupied by an existing residential structure, but has recently been sold for commercial use.

Across Mount Zion Road to the west is the Stadler Garden Center. To the north of this is a 5 lot commercial subdivision called Kings Kingdom

To the east of the Gladhill Property is the community of Feagaville, a small residential area consisting of approximately 150 persons and centered around a church, a small store and a community hall.

B. SUBDIVISION ACTIVITY

The Gladhill Property boundary originally crossed US Route 340 and Feagaville Lane. A plat of public taking was recorded in March, 2005 to create lots of record, due to public road rights-of-way that separated the original tract.

On Makeshift Estates, the property adjoining the Gladhill Property to the north, a single 1.01 acre lot along Mt. Zion Road, called Lot 3,

was subdivided in 1987 from the original 51 acre tract. Shortly thereafter a residential structure was erected on the lot. In 1992, a portion of the remaining parcel with frontage along Mount Zion Road was rezoned from Residential to General Commercial. In 1995, this area, including the entire Mount Zion Road frontage, was added to Lot 3 for a total lot size of 8.01 acres. In 1998, Lot 3 was re-subdivided into 3 separate lots, called Lots 3A, 3B and 3C.

C. EXISTING ZONING

The Gladhill Property, including the land at issue, and Makeshift Estates along MD Route 180 (Jefferson Pike) are currently zoned Agriculture. Lots 3A, 3B and 3C of Makeshift Estates are zoned General Commercial.

To the west, across Mount Zion Road, Stadler's Garden Center/Nursery is zoned Agriculture and has been granted a Special Exception. North of Stadler's, Kings Kingdom 5 lot subdivision is zoned General Commercial. To the east is the community of Feagaville, with both Residential and Agricultural zoning.

The proposed General Commercial zoning would be compatible with existing and proposed land uses because the adjacent property to the north, Makeshift Estates, is already zoned General Commercial, and the area of the Gladhill Property in which the subject site is located is presently serving a commercial use.

5. RECOMMENDATION OF THE FREDERICK COUNTY PLANNING COMMISSION: The Frederick County Planning Commission recommended approval of the requested General Commercial Zoning.
6. RELATIONSHIP OF THE PROPOSED AMENDMENT TO THE FREDERICK COUNTY COMPREHENSIVE PLAN: The requested General Commercial zoning is not consistent with the 2002 Frederick Region Comprehensive Plan, in which this area is shown as Agriculture.

The Board adopts the neighborhood as delineated in the staff report and as more fully shown in the record.

Based on all the evidence submitted in this matter, the Board of County Commissioners finds that a mistake has been made in the existing zoning

classification (Agriculture) which has been applied to the property. The Board notes that the Planning Commission in 1998 made a condition of approval for the Makeshift Estates subdivision that an internal access be created across the area in question. This requirement was reinforced by the Planning Commission in 1999 by approval of the special exception site plan with a condition for internal access across the area in question for the benefit of Lots 3A and 3B of the Makeshift Estates subdivision. The Board further notes that the owner of the parcel of which the area in question is a part has acquired Lot 3A of the Makeshift Estates subdivision, so that rezoning of the area in question will permit a beneficial commercial use. Denial of the requested rezoning would result in a small 1.76 acre parcel which the evidence establishes is not feasible for beneficial use for any use permitted as of right or as a special exception under the existing Ag classification.

The Board finds that the internal access to Lots 3A and 3B required by the Planning Commission in 1998 and 1999 will effectively bisect the area in question. The Board further finds that the two parts of the area in question, resulting from the area being bisected by this required access, are unsuitable for uses permitted in the Agricultural zoning classification. The Board further finds that these facts were not made known to staff and the Board at the time of the Frederick Region Comprehensive Rezoning in 2002.

The Board further finds that the trend along Mt. Zion Road over the past years has been to rezone to commercial use properties along this side of Mt. Zion Road between Route 340 and Route 180. This fact was not known to the Board at the time of the 2002 comprehensive rezoning.

The Board finds and concludes that the constraints imposed by the Planning Commission as to the internal access for Lots 3A and 3B of Makeshift Estates, the unsuitability of the thus bisected 1.76 acre area for agricultural uses and the trend toward commercial zoning along this side of Mt. Zion road between Route 340 and Route 180 were factors, which if the Board had been made aware, would have resulted in rezoning the parcel as commercial during the 2002 comprehensive rezoning. The failure to take these factors into account constitutes a mistake within the meaning of Maryland Code Annotated Article 66B Section 4.05.

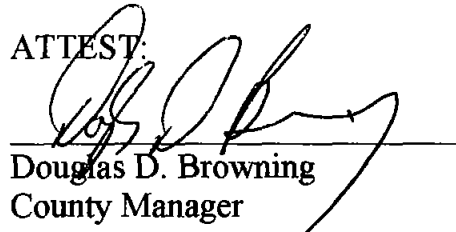
WHEREFORE, the Board of County Commissioners of Frederick County hereby grants the requested rezoning of the 1.76 acre area from the Agriculture to the General Commercial zone, and directs the Zoning Administrator to make the appropriate change in classification on the official zoning maps of Frederick County.


The undersigned hereby certify that this Ordinance was approved and adopted on the 25th day of April, 2006.

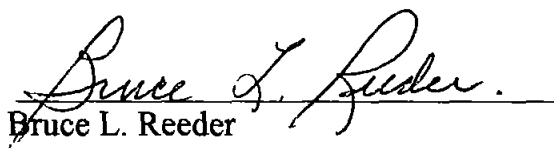
BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

By: Michael L. Cady
Michael L. Cady, Vice President

ATTEST:


Douglas D. Browning
County Manager


John R. Lovell, Jr.


Bruce L. Reeder

Commissioners John L. Thompson, Jr. and Jan H. Gardner voted against the proposed reclassification.